



GLOBAL FINANCIAL INTEGRITY

IMPACT OF BENEFICIAL OWNERSHIP REGISTRY AND LAW ON THE EXTRACTIVES SECTOR IN TANZANIA

Scoping Memorandum

JULY 2024

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This publication was made possible through the generous funding of the Government of Finland.



ACKNOWLEDGEMENTS

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TABLE OF CONTENTS

INTRODUCTION	2
DEFINITION OF BENEFICIAL OWNERSHIP	3
IMPACT OF BENEFICIAL OWNERSHIP IN THE EXTRACTIVES SECTOR	5
CONCLUSION	9



ABBREVIATIONS

GDP: Gross Domestic Product

EITI: Extractive Industries Transparency Initiative

BO: Beneficial Ownership

JV: Joint Venture

OECD: Organization for Economic Cooperation and Development

TEITI: The Extractive Industries (Transparency and Accountability) Act

BRELA: Business Registration and Licensing Agency

PURA: Petroleum Upstream Regulatory Authority



1 | INTRODUCTION

The significance of the extractive sector in Tanzania cannot be understated with regard to its impact on the country's economy. Tanzania is a country that hosts both large- and small-scale operations, which cumulatively contribute to 7.3% of the total GDP in 2022. Tanzania's diverse collection of minerals - which includes diamonds, copper, tanzanite and gold (which makes the major portion of its exports) - contributed to \$2.7 billion to the economy in 2021, according to The Bank of Tanzania. Further, the Bank notes that from 2018 - 2021 there has been a consistent increase in the sector which saw its share of GDP increase from 4.8% to 7.3% by 2021.

Despite this increase in the mining sector, it is also worth noting that Tanzania is relatively new when it comes to managing a large-scale extractive sector, and therefore, it may have challenges in its operations. Small-scale extraction has been the norm within Tanzania for more than 100 years, and it is currently working towards increasing the mining sector within the country to be in large-scale operations (Etter-Phoya et al., 2020).

Tanzania joined the Extractive Industries Transparency Initiative (EITI) in February 2009, with the objective of increasing transparency in the management of its extractive industries. The Initiative aimed to promote accountability within the government and among companies operating in oil, gas and mining activities. The 2013 EITI Standard included a provision of Disclosure of Beneficial Ownership and recommended implementing countries to maintain a publicly available register of the Beneficial Owners of corporate entities and the level of ownership. The disclosure aims at reducing risks such as tax evasion and conflict of interests; increasing trust and accountability; enhancing revenue collection by controlling owners who evade/dodge tax by concealing behind shadow companies; improving rule of law; improving investment climate; and preventing corruption and illicit financial flows.

Beneficial Ownership Regulations were introduced aiming to improve the levels of transparency and accountability among companies, specifically by uncovering individuals who have significant control or have shares that they may possibly own indirectly. The relevance of this is specifically towards the extractive sector, which exists complex ownership structures that can hinder the genuine beneficiaries of the extractive sector as intended ("Beneficial Ownership Portal | Home," 2020).



2 | DEFINITION OF BENEFICIAL OWNERSHIP

Beneficial ownership is defined as the natural person(s) who own or control an asset, property, business, or other financial interest even if the title or official ownership is held by someone else. The person or entity having beneficial ownership, as described in the beneficial ownership arrangement, does not have to be the legal owner or the one whose name is legally linked with the asset (Etter-Phoya et al., 2020). Beneficial Ownership in Tanzania is governed by a number of laws which have been enacted to facilitate the reporting of the B.O. information. The following are the laws currently in play:

1. **The Extractive Industries (Transparency and Accountability) Act, No. 23 of 2015 (TEITA)**
This Act governs transparency and disclosure requirements including, among others, revenue disclosure, contract engagements, and also beneficial owners' disclosure. The TEITA Act imposes an obligation on companies in the extractive industry to publish information, including but not limited to, names of individuals who own interests in the extractive industry companies. (see section 16(1)(b) of the Act).
2. **The Companies Act, 2020 ;(see section 14, 115, 129, 451A, 451B of the Act as amended);**
The Act was amended to include definitions of beneficial owner, arrangement and politically exposed persons; the B.O. to be included upon registration of Memorandum and Articles; and making and keeping entries for information of B.O.
 - i. **(Beneficial Ownership) Regulations, 2021**
Made under section 483(2) of the Companies Act, 2002; these regulations outline the information that is required and the manner in which it must be reported. The regulations also provide for the governance of the registry as well as the consequences of non-compliance.(See: *Section 2 of the Act and Regulation 2 of the Regulations*). A beneficial owner is characterized in company law as a natural person who fits the following conditions (See: Tanzania Extractive Industries Transparency Initiative, 2023):
 - a. Ultimately owns or has significant influence over an entity or arrangement;
 - b. Has a considerable economic stake in, or obtains a substantial economic advantage from, an entity or arrangement (either alone or in collaboration with other people);
 - c. In whose name an agreement is made;
 - d. Who has substantial authority or influence over another person or arrangement through a legal or informal agreement.

3. The Finance Act, 2020

This Act applies to beneficial ownership as it includes amendments of several statutes to reflect the beneficial ownership concept such as the definition of a beneficial owner, entity, and arrangement and the required information that must be reported. The Laws the address beneficial ownership include:

4. The Anti-Money Laundering Act, (CAP 423);

to include definitions of beneficial owner and ensuring information of beneficial owners of entities. (see section 3 of the Act as amended)

5. The Trustees Incorporations Act (CAP 318);

(see section 1, 2 and 15 of the Act as amended)

This Act was amended to also include definitions relating to B.O. in Trusts as well as particulars needed to be reported for Trusts.

6. The Income Tax Act [CAP 332 R.E. 2019];

This Act was amended to include among others, the definition of a **beneficial owner and other matters related to the beneficial owners, such as, the extent of chargeable income, sources of income and so forth**(see section 3, 69, of the Act as amended).



3 | Impact of Beneficial Ownership in the Extractives Sector

Beneficial Ownership (BO) laws in Tanzania are part of a global movement toward more openness and accountability in company operations. The extractive sector in Tanzania accounted for 5.2% of the national GDP in 2019 (Tanzania Extractive Industries Transparency Initiative, 2023). The majority of this contribution was from small-scale operations before the B.O-related amendments. The concept of Beneficial Ownership was introduced in the Companies Act through amendment by the Finance Act No. 8 of 2020 (ABC ATTORNEYS, 2021). The Finance Act 2020 led to the amendment of other laws, which included the Companies Act, Cap 212, Anti-Money Laundering Act, Cap. 423, the Trustees Incorporation Act, Cap. 318 and the Income Tax Act, Cap. 332. The Companies (Beneficial Ownership) Regulations, 2021 (GN No. 391 of 2021) were introduced by the Ministry of Industry and Trade with the intention of regulating the application of beneficial ownership as well as enforcement in Tanzania. Consequently, this led to the revision as well as updating new important regulatory compliance that were deemed to be necessary as far as Beneficial Ownership was concerned (Burhani, 2021).

As a result of the government making a strong push for accountability in 2015 by passing the Transparency and Accountability Act and later, with the implementation of the beneficial ownership laws in 2020, the new laws even included companies like Barrick Gold Corporation which is involved in a joint venture (JV) with Tanzanian government. This demonstrated that even high-profile companies would not be shown favoritism in this matter which consequently also affected other major players such as North Mara, Bulyanhulu and Buzwagi Mines (Inspire Consultants Limited, 2020).

However, as was the case in many other countries, the COVID-19 pandemic affected government operations in many areas so, therefore, the implementation of the beneficial ownership laws was delayed. As a result of the COVID-19, travel was restricted which consequently affected stakeholders within the industry. There was also a reduction in prices. A combination of the monetary policy measures and the fiscal policy in the COVID-19 reality caused the government of Tanzania to introduce The Policy Forum to explore taxation within the extractive sector, focusing specifically on the governance of these extractive operation units (Tax Justice Network, 2020). As a result of these interventions, the overall growth was recorded to be 17.7% in the year 2020 within the extractive sector (Inspire Consultants Limited, 2020). This is a significant increase and an improvement of the GDP which had contributed to the 5.2% increase in the GDP in the previous year 2019. This therefore means that there was a 17.7% increase in the proportion contributed which led to a 6.12% contribution to the GDP.

Despite these significant improvements, challenges have also been part of the process. The implementation and introduction of the Beneficial Ownership laws (Finance Act No. 8 of 2020) were meant to enhance transparency, improve integrity and enforce accountability within the extractive sector. The intention behind the implementation was to uncover the individuals who hold significant levels of control over these operations

and also indirectly own shares. The collectively targeted sectors included gold, diamonds, and tanzanite, as well as the production of natural gas, which consequently was impacted by these regulations.

The registrar of companies was tasked with establishing and maintaining a register of the beneficiaries of all companies registered within Tanzania, both mainland and in Zanzibar (Burhani, 2021).

With respect to the reforms of the Companies Act (Cap 212), the company is under obligation to provide up-to-date records/information about beneficial owners upon request by the Registrar of Companies. The beneficial owner is required to file with the Registrar of Companies. In accordance with Section 451B, the Beneficial Owners' information held by the Registrar of Companies will be accessible exclusively by government institutions and agencies in Tanzania that handle anti-money laundering and terrorism funding. Thirdly, communication of any adjustments touching on beneficial ownership to the registry ought to be made within thirty (30) days following such alterations (Mndolwa and Obeto, 2021).

According to the OECD (2023) the Beneficial Ownership Laws have several positive outcomes including the following:

1. **Revealing True Ownership:** According to the BO laws, firms should provide information on those who genuinely hold or exercise control over them. This has exposed the real face of owners of the corporations that masqueraded under other corporate entities.
2. **Preventing Illicit Activities:** Through BO laws, it has been possible to point out real owners of companies and stop misdeeds like tax evasion, money laundering, and corruption. The people who engage in such businesses mainly depend on opaque corporations to keep their identities secret.
3. **Enhancing Accountability:** BO laws enhance responsibility as those involved in a company should answer for their deeds. It has also enhanced good governance and minimized the tendency of corporate malpractice.
4. **Boosting Investor Confidence:** Enhanced transparency due to the BO laws has increased investor confidence. Potential shareholders are likely to buy shares of a company when they establish its ultimate ownership.
5. **Governance:** BO laws strengthen extractive sector governance through enhanced oversight of the mining companies. These laws aid in reducing cases of embezzlement and improper administration.



As a result of the implementation, the Beneficial Ownership (BO) laws and registry in Tanzania will impact the following groups:

-  **Government:** Transparency and accountability on the government side lead to reduced chances of tax evasion or money laundering. This may also raise the government's revenue base in the extractive industry (THOMAS SCURFIELD, 2023).

-  **Investors:** That means more transparency and, ultimately, a greater degree of reassurance for investors, which is crucial for the extractive sector. This makes it much easier for them to invest in mining companies that, at least to some extent, can identify their owners.

-  **Civil Society:** Transparency helps civil societies to keep mining companies responsible since they become clear on what is taking place. It creates an opportunity for better administration of the extracting industry.

-  **Companies:** The trust and credibility that companies have with stakeholders, such as owners of capital, consumers, and surrounding societies, also helps them (Etter-Phoya et al.,2020).

-  **Local Communities:** Increased accountability of mining companies can improve their social and environmental impact on local communities as well as provide benefits to these communities.



4 | RECOMMENDATIONS

1. Tanzania should amend its current legal framework, particularly the Companies Act 2020 and its regulations, to allow public access to beneficial ownership information while maintaining a balance between privacy and transparency, as provided by the Beneficial Ownership Data Standard.
2. Tanzania should also wish to expand beneficial ownership disclosures to other segments of the upstream extractive value chain, for instance through collection and disclosure of beneficial ownership information from extractive-sector service providers, to enable monitoring of adherence to local content provisions and to manage corruption and tax evasion risks.
3. Tanzania should request all companies holding oil, gas and mining licenses to disclose beneficial ownership information and provide adequate assurances for data reliability. Considering the large number of extractive license-holders and the limited resources of TEITI, the government is encouraged to implement its commitment to establish a public register of beneficial owners. As recommended by the 2017 beneficial ownership study, this could be integrated into the corporate register managed by BRELA. An alternative option is to integrate this information into the license register.
4. Tanzania should require all applicants of oil, gas and mining licenses to disclose their beneficial owners at the application stage. An assessment of the comprehensiveness and reliability of this information should be integrated into the licensing procedures followed by PURA and the Mining Commission.
5. Tanzania is encouraged to agree priorities for beneficial ownership disclosures and, based on these priorities, plan efforts to obtain this data. For example, Tanzania may prioritize disclosures by certain types of companies, companies holding a certain type of license or producing a certain commodity due to risks related to corruption, tax evasion or circumventing provisions for local participation. These priorities should guide outreach efforts to companies and provide them guidance.
6. It is recommended that Tanzania considers using the EITI's model beneficial ownership declaration Form39 to ensure that disclosures are published in open data format, comparable and easy to analyse.
7. Tanzanian should need to expand beneficial ownership disclosures to other segments of the upstream extractive value chain, for instance through collection and disclosure of beneficial ownership information from extractive-sector service providers, to enable monitoring of adherence to local content provisions and to manage corruption and tax evasion risks.

5 | CONCLUSION

The implementation of beneficial ownership reporting in Tanzania may appear to be abrupt or not contemplated. However, based on the above background, it is evident that it has been in execution process for some years. It was crucial for the concept to be fully implemented in Tanzania to cater to several purposes which include prevention and exposure of corruption, money laundering, and illicit financial flows and other financial crimes.

Imposition of this law in Tanzania will enable due diligence to uncover persons relating to Tanzanian established businesses, their source of income and trace their business activities even where it is indirect. Further, beneficial ownership reporting increases trust and accountability in the management of entities registered in Tanzania.

Tanzania's extractive sector has been greatly impacted by the introduction of Beneficial Ownership (BO) regulations and the formation of a BO registry. These initiatives not only increased openness but also accountability and governance, all of which are critical components for the long-term success of any industry.

By compelling firms to reveal the persons who ultimately own or manage them, the BO laws have ushered in a new era of openness in Tanzania. This has aided in revealing corporations' real ownership, which was previously disguised behind layers of corporate organizations. As a result, criminal acts such as tax evasion, money laundering, and corruption have become more difficult to carry out, as these crimes frequently rely on opaque business structures to conceal the identities of the persons involved.

However, enforcing these regulations and maintaining a BO registry has had challenges. Some of these are problems encountered in the development of strong systems of collecting, verifying, and administrating beneficial ownership data; incomplete and reliable register entry; opposition of reforms by entrenched interest groups, knowledge and practice relating to new rules in the firms as well as judicial interpretations. The register is also only available to few authorities and not the public thus the lack of scrutiny from key personnel in the public such as journalists and civil societies.

Despite these problems, it is apparent that the BO legislation and register are a step in the right direction toward ensuring that all stakeholders benefit from Tanzania's extractive industry. These efforts will increase openness and accountability in the industry. However, there is a need to analyze the level of effectiveness of the implementation of the BO as per this scoping memo.

REFERENCES

ABC ATTORNEYS, 2021. BENEFICIAL OWNERS IN TANZANIA.

Angela Mndolwa, Flora Obeto, 2021. Requirements for disclosure of Beneficial Ownership of companies.

Beneficial Ownership Portal | Home [WWW Document], 2020. . BRELA. URL <https://bo.brela.go.tz/> (accessed 10.26.23).

Burhani, A., 2021. REGULATIONS OF BENEFICIAL OWNERSHIP FOR COMPANIES IN TANZANIA.

Etter-Phoya, R., Danzi, E., Jalipa, R., 2020. Beneficial ownership transparency in Africa.

Inspire Consultants Limited, 2020. A Study on Taxation in the Extractive Industry, Governance and Poverty: The State of Tanzania.

OECD, 2023. Overview of Progress and Policy Challenges, in: OECD Investment Policy Reviews. OECD, pp. 13–28.

Tanzania Extractive Industries Transparency Initiative, 2023.

Tax Justice Network, 2020. The state of play of beneficial ownership registration in 2020 [WWW Document]. Tax Justice Network. URL <https://www.taxjustice.net/2020/06/03/the-state-of-play-of-beneficial-ownership-registration-in-2020/>

THOMAS SCURFIELD, 2023. Equitable Sharing of Mining Profits: The Best Deal for Tanzania?





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